



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-1011]

RIN 1625-AA00

Safety Zone for Fireworks Displays; Upper Potomac River, Washington Channel, DC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Upper Potomac River. This action is necessary to provide for the safety of life on these navigable waters of the Washington Channel adjacent to The Wharf DC, Washington, DC, for recurring fireworks displays from January 12, 2019, through December 31, 2019. This regulation prohibits persons and vessels from entering the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative.

DATES: This deviation is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 31, 2019. For the purposes of enforcement, actual notice will be used from January 12, 2019, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-1011 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Mr. Ron Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410-576-2674, email Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

| | |
|--------|---------------------------------|
| CFR | Code of Federal Regulations |
| COTP | Captain of the Port |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| NPRM | Notice of proposed rulemaking |
| § | Section |
| U.S.C. | United States Code |

II. Background Information and Regulatory History

On October 30, 2018, Pyrotecnico, Inc., of New Castle, PA, notified the Coast Guard that it will be conducting fireworks displays, sponsored by The Wharf DC, from 7 p.m. to 11:59 p.m. for various events from January 12, 2019, through December 31, 2019. The fireworks are to be launched from a barge in the Washington Channel, adjacent to The Wharf DC in Washington, DC. In response, on November 14, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled "Safety Zone for Fireworks Displays; Upper Potomac River, Washington Channel, DC" (83 FR 56768). There we stated why we issued the NPRM, and invited comments on our proposed

regulatory action related to this fireworks display. During the comment period that ended December 14, 2018, we received 29 comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to mitigate the potential safety hazards associated with a fireworks display in this location.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port (COTP) Maryland-NCR has determined that potential hazards associated with the fireworks to be used in these displays will be a safety concern for anyone within a 200-foot radius of the fireworks barge. This rule is needed to ensure safety of vessels on the navigable waters within 200 feet of the fireworks barge on the Washington Channel before, during, and after the scheduled events.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received 29 public submissions to the docket responding to our NPRM published November 14, 2018. We thank all of the commenters for taking time to review the NPRM and submit comments regarding this action.

The majority of commenters expressed support for the rule but there were four issues presented.

The size of the safety zone is not effective and should be increased for public safety purposes.

The minimum safe distance from the fireworks barge used by the Coast Guard to

determine the size of the safety zone is based on industry standards for outdoor aerial fireworks set by the National Fire Protection Association (NFPA). The NFPA standard for this fireworks display is 140 feet from the discharge site. At the request of the contracted fireworks company, Pyrotecnico, the Coast Guard is using 200 feet for the size of its safety zone, which is an increase of approximately 40 percent above the safe distance set by the NFPA.

The duration of the enforcement of the zone, from 7 p.m. until 11:59 p.m., is excessive and doesn't agree with the duration of a typical fireworks show.

Although these fireworks shows are typically of short duration, not all of these fireworks displays will be scheduled to occur at the same time of the evening throughout the year. The actual enforcement period used for each of these fireworks events is expected to be two hours. In developing the length of the safety zone enforcement period of five hours, the Coast Guard has taken care to avoid imposing restrictions on waterway usage longer than what is justified to ensure the safety of the public.

A barrier or sign, and other methods of notice, should be used to separate the zone from the rest of the waterway and its users.

The following forms of notice will be provided for each fireworks display. The fireworks barge that operates within the safety zone will have a sign affixed to the port and starboard side of the barge labeled "FIREWORKS—DANGER—STAY AWAY" to provide on-scene notice that the safety zone will be enforced on that day. Patrol vessels assigned by the COTP Maryland-National Capital Region will be present to monitor the fireworks display and enforce the safety zone. In addition, the COTP Maryland-National Capital Region will notify the public of the specific enforcement times of the safety zone

by all appropriate means to affect the widest publicity among the affected segments of the public, including publishing a Notice of Enforcement in the **Federal Register** and an article in the Local Notice to Mariners. Broadcast Notice to Mariners will also be made for each of these events, to begin prior to that start of the scheduled event, and to continue to notify the public, until immediately after its completion.

Waterway users must be notified with ample time so that they have the ability to obtain the authorization required to transit the area of the safety zone.

Since the forms of notice stated previously will be provided in advance of each fireworks display, waterway users will have the time needed to request authorization to transit the area of the safety zone and make appropriate voyage plans.

There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a temporary safety zone in the Washington Channel from January 12, 2019, through December 31, 2019. The safety zone will cover all navigable waters of the Washington Channel within 200 feet of the fireworks barge. For each event, the barge will be located within an area bounded on the south by latitude 38°52'30" W, and bounded on the north by the southern extent of the Francis Case (I-395) Memorial Bridge, located at Washington, DC. The safety zone will be enforced from 7 p.m. until 11:59 p.m. for each fireworks display scheduled from January 12, 2019, through December 31, 2019. The duration of the safety zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, duration, and time-of-day of the safety zone. Although vessel traffic will not be able to safely transit around this safety zone when being enforced, the impact would be for less than 5 hours during the evening when vessel traffic in Washington Channel is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their

fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in

complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will be in effect for the entire year, however, when activated, lasting less than 5 hours that prohibits entry within a portion of the Washington Channel. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; and; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-1011 to read as follows:

§ 165.T05-1011 Safety Zone for Fireworks Displays; Upper Potomac River, Washington Channel, Washington, DC.

(a) Location. The following area is a safety zone: All navigable waters of the Washington Channel within 200 feet of the fireworks barge located within an area bounded on the south by latitude 38°52'30" W, and bounded on the north by the southern extent of the Francis Case (I-395) Memorial Bridge, located at Washington, DC. All coordinates refer to datum NAD 1983.

(b) Definitions. As used in this section:

(1) Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

(2) Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. All vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's designated representative by telephone at 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) Enforcement officials. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement. This safety zone will be enforced January 12, 2019, through December 31, 2019, from 7 p.m. to 11:59 p.m. each day that a barge with a "FIREWORKS—DANGER—STAY AWAY" sign on the port and starboard sides is on-scene or a "FIREWORKS—DANGER—STAY AWAY" sign is posted on land adjacent to the shoreline, near the location described in paragraph (a) of this section. The enforcement times of this section are subject to change, but the duration of each enforcement of the zone is expected to be 5 hours or less. Prior to enforcement, the COTP will provide notice by publishing a Notice of Enforcement in the **Federal Register**, as well as issuing a Broadcast Notice to Mariners.

Dated: February 11, 2019

Joseph B. Loring,
Captain, U.S. Coast Guard,
Captain of the Port Maryland-National Capital Region.
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